JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
EMANUEL R. WEIMAR
CHRISTINE M. WEIMAR

DEFENDANTS
CARRINGTON MORTGAGE SERVICES, LLC

(b) County of Residence of First Listed Plaintiff: BUCKS
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant:
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
LAW OFFICE OF JOSEPH M. ADAMS
JOSEPH M. ADAMS, ESQ.
200 HIGHPOINT DRIVE, SUITE 211A
CHALFONT, PA 18914
215-996-9977

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
15 USC SECTION 1692, et seq

Brief description of cause:
Violations of Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 11/23/2016

SIGNATURE OF ATTORNEY OF RECORD: [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 58 IRONHILL RD, NEW BRITAIN, PA 18901

Address of Defendant: 1600 S. DOUGLASS RD, SUITES 110 + 200-A, ANAHEIM, CA 92805

Place of Accident, Incident or Transaction: 58 IRONHILL RD, NEW BRITAIN, BUCKS CO., PA 18901

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☐

Does this case involve multidistrict litigation possibilities? Yes☐ No☒

RELATED CASE, IF ANY:

Case Number: ______________ Judge ______________ Date Terminated: ______________

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
   Yes☐ No☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
   Yes☐ No☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
   Yes☐ No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
    (Please specify) 15 USC § 1692, et seq.

B. *Diversity Jurisdiction Cases:*

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
   (Please specify) ______________

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, JOSEPH M. ADAMS, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: 11-23-16 [signature] Attorney-at-Law 58430 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11-23-16 [signature] Attorney-at-Law 58430 Attorney I.D.#

CIV. 609 (5/2012)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

EMANUEL R. WEIMAR and CHRISTINE M. WEIMAR	:	CIVIL ACTION
v.	:	
CARRINGTON MORTGAGE SERVICES, LLC	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security - Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos - Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management - Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management - Cases that do not fall into any one of the other tracks. **(X)**

11-23-16	[signature]	**Joseph M. Adams, Esq.**
Date	**Attorney-at-law**	**Attorney for Plaintiff**

215-996-9977	**215-996-9111**	**josephmadamsesq@verizon.net**
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMANUEL R. WEIMAR; and, CHRISTINE M. WEIMAR; Plaintiffs,	CIVIL ACTION
v.	No.:
CARRINGTION MORTGAGE SERVICES, LLC; Defendant.	JURY TRIAL DEMANDED

COMPLAINT

INTRODUCTION

1. This action is brought against Defendant for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq. in connection with collection activities relevant to a mortgage on residential property. Plaintiffs also sue under the Declaratory Judgment Act, 28 U.S.C. § 2201.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

3. Venue is proper in this District Court pursuant to 28 U.S.C. § 1391 in that defendant conducts business in this District, plaintiffs reside in this District, and a substantial part of the events giving rise to this action occurred in this District.

PARTIES

4. Plaintiffs, Emanuel R. Weimar and Christine M. Weimar, 58 Iron Hill Road, New Britain, Bucks County, Pennsylvania, 18901, are "consumers" as defined by 15 U.S.C. § 1692a(3).

5. Defendant, Carrington Mortgage Services, LLC ("Carrington") is a limited liability company, with offices located at 1600 South Douglass Road, Suites 110 & 200-A, Anaheim, California, 92805 and is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

FACTS

6. Carrington regularly attempts to collect consumer debts of behalf of third parties.

7. At all times mentioned herein, Carrington acted itself and/or through its officers, directors, managers, agents, servants, contractors, attorneys, representatives and/or employees.

8. The alleged debt was made primarily for family, personal or household purposes with the meaning of 15 U.S.C. § 1692a(5).

9. Specifically, the debt allegedly owed by Plaintiffs was in connection with a purported loan made for the purchase of a house, which alleged debt has been the subject of an ejectment action by Deutsche Bank National Trust in the Bucks County Court of Common Pleas, Docket No. 2014-3203.

10. The Common Pleas Court dismissed the case on the basis that Deutsche's remedy lie in "foreclosure" not "ejectment". A copy of the opinion is attached as **Exhibit A.**

11. Deutsche then appealed the matter to the Superior Court of Pennsylvania, Docket No. 2596 EDA 2015, however, subsequently and without explanation, withdrew the appeal on or about February 29, 2016 prior to briefs being filed. **See Exhibit B.**

12. Plaintiffs incorporate the public dockets and filings in the above cases herein by reference.

13. Subsequently, on September 1, 2016, Carrington acquired the servicing rights of the alleged loan debt from Bank of America, N.A.; said date being after the alleged debt was purportedly in default, thereby making the FDCPA applicable in this matter. *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379, 403-4 (3d Cir. 2000).

14. Defendant attempted to collect the alleged debt from Plaintiffs and, in doing so, engaged in "communications" within the meaning of 15 U.S.C. § 1692(2).

COUNT ONE
Violations of the Fair Debt Collection Practices Act ("FDCPA")
15 U.S.C. § 1692, et seq.

15. In connection with the collection of the debt, Carrington mailed to Plaintiffs a billing statement dated September 19, 2016 which listed, among others, the following charges on the following dates in 2016:

a)	09/10	FCL [foreclosure] LEGAL FEES Billed -	$916.00
b)	09/10	FCL TITLE SERVICES Billed -	575.00
c)	09/10	FCL RECORDING FEE Billed -	74.25
d)	09/10	PROP PRES-Utilities Billed	3,987.51
e)	09/10	ATTORNEY FEE Billed	612.25
f)		POST AND PUBLICATION FEE Billed	19.23

See Exhibit C.

16. The notation PROP PRES-Utilities Billed is undefined and confusing and appears and, further, appears to be unwarranted in that Plaintiffs pay their own utilities.

17. The notation FCL RECORDING FEE Billed is undefined and confusing, and appears to be unwarranted in that there was no "recording" of anything.

18. If said charges represent billing for the aforesaid legal proceedings, they are impermissible and confusing because no "foreclosure" proceeding was brought – only an "ejectment" proceeding in which Plaintiffs prevailed at the trial level. Further, any charges for attorneys fees are impermissible because Deutsche did not bring a permissible lawsuit, and, further because Deutsche voluntarily discontinued the appeal after losing at the trial level.

19. The legal/attorney fee charges are not due and owing in that Carrington is trying to assess attorney's fees against Plaintiff for legal services that were not authorized or were otherwise improper or impermissible.

20. Further, if the legal/attorney fees are representative of legal services performed after the withdrawal of the aforesaid appeal (as may be the case given that the dates are in September 2016), then said charges are illegal pursuant to Act 6, 41 P.S. § 406(3), which caps attorney's fees at $50.00 prior to the commencement of foreclosure proceedings.

21. The POST AND PUBLICATION FEE billed in the amount of $19.23 is not due and owing since there was nothing posted or publicized, or, in the event the charge represents something else, it is confusing and undefined.

22. Further, upon Plaintiffs request, Carrington sent Plaintiffs a payoff statement, dated October 28, 2016, which provides further confusion with respect to the amount of the purported debt; particularly in view of the following facts:

a) a recording fee of $66.00 is listed, but there was nothing recorded;

b) assuming, however, anything was recorded, the said $66.00 recording fee contradicts that $74.25 recording fee on the billing statement of September 19, 2016;

c) the payoff statement provides no itemization with respect to what is generally termed as "Other Unpaid Expenses" in the amount of $6,184.24;

d) the amount of interest claimed due in the amount of $46,744.77 is without justification or explanation.

e) adding further confusion is the handwritten statement on Carrington's payoff statement stating, "We will mail the rest of the papers." Plaintiffs are unaware of what this means, and, as of the date of this filing, Plaintiffs have received no additional papers from Carrington.

See Exhibit D.

23. The foregoing conduct by Carrington constitutes violations of at least the following sections of the FDCPA:

a) § 1692e by using any other false, deceptive, or misleading representation or means in connection with the debt collection;

b) § 1692e(2) by misrepresenting the character, amount or legal status of the alleged debt;

c) § 1692e(10) by using false representation or deceptive means to collect a debt;

d) § 1692f by using an unfair or unconscionable means to collect or attempt to collect the alleged debt;

e) § 1692f(1) by attempting to collect an amount not authorized by an agreement creating the purported debt or permitted by law.

f) § 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person;

24. As a direct result of Carrington's aforesaid violative conduct, Plaintiff suffered actual damages including but not limited emotional distress, mental anguish, loss of sleep, worry and anxiety.

WHEREFORE, Plaintiffs demand judgment against Carrington for,

a) actual damages pursuant to 15 U.S.C. § 1692k(a)(1);

b) statutory damages in the amount of $1,000.00 per Plaintiff pursuant to 15 U.S.C. § 1692k(a)(2)(A);

c) costs of suit and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);

d) such other relief as the Court deems just and proper

COUNT TWO
DECLARATORY JUDGMENT TO DECLARE CERTAIN CHARGES ILLEGAL AND TO PROVIDE AN ACCURATE PAYOFF STATEMENT PURSUANT TO THE TRUTH IN LENDING ACT, 15 U.S.C. § 1639(g)

24. Plaintiffs incorporate the foregoing paragraphs by reference.

25. Plaintiffs are entitled to a Declaratory Judgment under 28 U.S.C. § 2201, declaring the Defendant's aforesaid charges are illegal and are to cease.

26. Pursuant to the Truth in Lending Act, specifically 15 U.S.C. § 1639(g), Plaintiffs are also entitled to receive an itemized payoff statement which is accurate.

27. For the reasons set forth above, the payoff statement is neither accurate, nor itemized.

WHEREFORE, Plaintiffs request the Court enter an order declaring Defendant's foregoing charges are illegal and Plaintiffs are not liable for same. Plaintiffs also request the court order Carrington to provided an itemized and accurate payoff statement as they are required to do under the Truth in Lending Act.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all triable claims.

LAW OFFICE OF JOSEPH M. ADAMS

By: /s/ Joseph M. Adams

Joseph M. Adams, Esq.
Attorney ID: 58430
200 Highpoint Drive
Suite 211A
Chalfont, PA 18914
215-996-9977
Attorney for Plaintiffs

See attached list 10/21/15

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA—CIVIL DIVISION

DEUTSCHE BANK NATIONAL TRUST COMPANY, F/K/A BAKERS TRUST COMPANY OF CALIFORNIA, NATIONAL ASSOCIATION AS TRUSTEE FOR THE HOLDERS OF THE VENDEE MORTGAGE TRUST 1998-2	No. 2014-03203
vs.	
EMANUEL R. WEIMAR AND CHRISTINE M. WEIMAR	

OPINION

Deutsche Bank National Trust Company (hereinafter "Appellant") appeals to the Superior Court from this Court's July 8, 2015, Order sustaining Emanuel R. Weimar and Christine M. Weimar's (hereinafter "Appellees") Preliminary Objections to Appellant's First Amended Complaint. We file this Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

I. FACTUAL AND PROCEDURAL HISTORY

In December of 1997, Appellees entered into an Installment Contract (hereinafter "Contract") with the United States Office of Veterans Affairs (hereinafter "VA") for the purchase of a parcel of real estate. (Plaintiff's First Amended Complaint in Ejectment, ¶ 4). Specifically, the real estate is a single family residence located at 58 Iron Hill Road, New Britain, PA 18901. (Plaintiff's First Amended Complaint in Ejectment, ¶ 4). The Contract provided for a sales price of $148,357.00 payable in monthly installments through January 2028, with an interest rate of 7.25% per annum. The ultimate goal of the Contract was for Appellees to

EX. A

purchase the property, therefore transferring title to them after the completion of all payments. (Plaintiff's Complaint Exhibit B).

The VA subsequently transferred its rights under the Contract to Appellant. (Plaintiff's First Amended Complaint, ¶ 5). The property was then sold to Appellant through a sale and deed agreement between the VA and Appellant, which was confirmed by a Quiet Title action and Order entered on April 29, 2012, in Bucks County Docket No. 2012-07272. (Plaintiff's First Amended Complaint, ¶ 7). This action was recorded with the Recorder of Deeds in and for Bucks County on February 3, 2014, as instrument No. 2014005747. (Plaintiff's First Amended Complaint, ¶ 7). The Order reflects that the transfer of title from the VA to Appellant became effective June 25, 1998. (Plaintiff's First Amended Complaint ¶ 8). Therefore, title to the premises is held solely by Appellant. (Plaintiff's First Amended Complaint ¶ 9).

Appellees stopped making monthly payments from June 1, 2011, up until the time this action was filed. (Plaintiff's First Amended Complaint, ¶ 10). Neither party disputes Appellees are in default of the Contract, but disagree as to whether the Contract constitutes an installment contract for the sale of real estate or a mortgage. The type of Contract present is determinative of Appellant's remedy. Appellant filed a Complaint in Ejectment against Appellees on May 6, 2014. (Defendant's Preliminary Objections to Plaintiff's First Amended Complaint, ¶ 1).

II. STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

On September 30, 2015, Appellant filed his Statement of Matters Complained of on Appeal, raising the following issues, *verbatim:*

> 1. Whether the trial court erred in sustaining Defendant's preliminary objections on the grounds that Plaintiff's complaint was legally insufficient or failed to state a claim upon which relief could be granted?

2. Whether the trial court erred in sustaining Defendant's preliminary objections on the grounds that a suit for breach of installment contract for the purchase of real estate should be a mortgage foreclosure action, not an ejectment action?

3. Whether the trial court erred in sustaining Defendant's preliminary objections on the grounds that Plaintiff had not sent Act Notices to Defendant as required by Pennsylvania law?

4. Whether the trial court erred in sustaining Defendant's preliminary objections on the grounds that Plaintiff's mailing of Act Notices necessitates it to file an action in mortgage foreclosure?

5. Whether the trial court erred in sustaining Defendant's preliminary objections as filing a breach of installment contract for purchase of real estate as a mortgage foreclosure would be a mischaracterization of the debt and construed as a violation of local, state and/or federal debt collection laws?

6. Whether the trial court erred in sustaining Defendant's preliminary objections on the grounds that the installment contract for purchase of real estate was originated by the Office of Veterans Affairs thereby falling under the ejectment exemption found in 68 P.S. § 903(c)?

7. Whether the trial court erred in sustaining Defendant's preliminary objections on the grounds that Plaintiff's complaint was improperly verified?

III. DISCUSSION

Appellant raises seven challenges in this appeal, several of which concern the same issues. First, Appellant claims that its Complaint is legally sufficient because the proper remedy for default in this matter is an action in ejectment. This case turns on whether the instant transaction qualifies as an installment contract or a "residential mortgage," and therefore, we will focus our discussion on this distinction. The Loan Interest and Protection Law (hereinafter "Act 6") governs pre-foreclosure requirements in Pennsylvania, and has numerous functions. 41 P.S. §101 (2015); Beckett v. Laux, 577 A.2d 1341, 1342 (Pa. Super. Ct. 1990). Relevant among those functions is that it offers homeowners with "residential mortgages" protection from "overly zealous residential mortgage lenders" by prescribing procedural requirements for mortgage foreclosure actions. Id.

Appellant incorrectly asserts that the Contract here does not qualify for the protections afforded under Act 6. Therefore, our initial task is to determine whether the Contract is within the range of transactions Act 6 contemplated in its use of the term "residential mortgage." Notably, the protections of Act 6 have been held to apply to real property purchased under a land installment contract, such as the Contract in this case.[1] Section 101 of Act 6 defines "residential mortgage" as:

> [A]n obligation to pay a sum of money in an original bona fide principal amount of the base figure or less,[2] evidenced by a security document and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium unit.

41 P.S. § 101(f). Therefore, for a transaction to qualify as a residential mortgage, four elements must unite: "(1) an obligation to pay an original bona fide principal amount of $[237,474] or less, (2) evidenced by a 'security document,' (3) secured by a lien upon real property in Pennsylvania, and (4) containing two or fewer residential units on or which two or fewer residential units are constructed." Anderson Contracting Co., 417 A.2d at 1229. Here, the parties do not dispute that the original obligation was $148,357 and that the property contains only one residential unit. Therefore only elements two and three warrant further discussion.

To meet the second element, the transaction must be evidenced by a "security document." A security document is defined as "a mortgage, deed of trust, real estate sales contract, or other document creating upon recordation a lien upon real estate." Beckett v. Laux, 577 A.2d 1341, 1344 (Pa. Super. Ct. 1990) (citing 41 P.S. § 101). Section 601 of Act 6 permits the Secretary of

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[1] For example, the Pennsylvania Superior Court has held that, "the rights and remedies provided by Act No. 6, in particular, the cure provisions of Section 404 of the Act, 41 P.S. § 404, should not be denied to a class of Pennsylvania home purchasers solely because their obligation to pay the balance of the purchase price is evidenced and secured by some other transaction also designed to create a security interest in real estate. Substance must prevail over form." Anderson Contracting Co. v. Daugherty, 417 A.2d 1227, 1232 (Pa. Super. Ct. 1979).

[2] The base figure was originally set at $50,000; however, it has since been raised to $237,474, effective January 1, 2014. See 43 Pa. Bulletin 6807 (Nov. 16, 2013).

Banking to prescribe regulations to carry out its purposes. Id. (citing 41 P.S. § 601). Pursuant to this authority, the Department of Banking has ruled that the term "security document" shall include:

> (i) An installment land contract, land contract, or lease purchase agreement. It shall also include any similar document if it is a lease of real property where the lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the real property involved and it is agreed that the lessee will become, or for no other (or a nominal) consideration has the option to become, the owner of the real property upon full compliance with the terms of the agreement.

10 Pa. Code § 7.2. Since the Contract here is an installment contract for the sale of real estate where Appellees become owners upon completion of all payments, this Court was correct in determining that it falls within the Department of Banking's definition of a security document.

Finally, the transaction must be secured by a lien. It is important to note that the Regulations promulgated by the Department of Banking support an expansive construction of the term "lien," and infer that the term includes an interest in real property. Anderson Contracting Co., 417 A.2d at 1231. The Superior Court has held that a lien may be viewed as a party's right to proceed against a certain piece of property to enforce an obligation. Id. The Superior Court has also specifically held that for the purposes of Act 6, retention of title by the vendor is the same as reserving a lien or mortgage.[3] Id. Here, Appellant retained title to the property as demonstrated by the Quiet Title action on April 29, 2012, which was subsequently recorded with the Recorder of Deeds in and for Bucks County. The record indicates title to the property is vested in Appellant, and as a result, Appellant has the right to proceed against Appellees' default. Therefore, when Appellant's title was recorded, it created a lien upon real estate.

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[3] The Superior Court explained this point in Anderson Contracting, Co., stating that, "Under the typical installment land contract . . . the vendee takes possession and makes periodic installment payments until the balance of the contract price is paid. Legal title to the property is, however, retained by the vendor until the terms of the contract are satisfied. Retention of title by the vendor serves as security for the vendee's performance of the contract. In essence, then, a vendor who retains title has an interest which, although strictly speaking is not a lien, may be enforced as though it were. There can be no sensible distinction between the case of a legal title conveyed to secure the payment of a debt and a legal title retained to secure such payment. Conceptually, therefore, the retention of the title by the vendor is the same as reserving a lien or mortgage. Realistically, vendor-vendee should be viewed as mortgagee-mortgagor. To conceive of the relationship in different terms is to pay homage to form over substance. . . In short, we hold that for the purposes of Act No. 6 a vendor under a land installment contract will be deemed to be secured by a lien upon real property . . . ." 417 A.2d at 1231 (internal citations omitted).

In light of our above discussion, it is clear that Act 6 intended to protect, as a residential mortgage, the Installment Contract between Appellees and Appellant. Although titled an "Installment Contract," the Superior Court has held that substance must prevail over form. See Anderson Contracting Co., 417 A.2d at 1232. Appellees are therefore afforded protections as residential mortgage holders, and Appellant may proceed only by commencing an action in mortgage foreclosure pursuant to Pa.R.C.P. No. 1141.

Appellant's next two challenges concern the Act Notices Appellee received regarding the potential mortgage foreclosure. It is significant to note that Appellees raise the issue of the Act Notices only as additional support to their assertion that the Contract meets the four requirements of a residential mortgage under Act 6, because Appellant specifically refers to the Contract as a "mortgage" in the Notices.[4] However, this factual finding did not form a basis for this Court's decision to sustain the Preliminary Objections, and is not an appropriate ground for appeal.

In addition, Appellant claims that mischaracterization of the debt can be construed as a violation of local, state, and/or federal debt collection laws because this is a land installment contract, not a mortgage. See Memorandum of Law in Support of Plaintiff's Answer in Opposition to Defendant's Preliminary Objections, p.3. However, because this Court properly determined that this transaction qualifies as a residential mortgage, and not an installment contract, there is no error in this respect.

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[4] In support of their argument that the Contract meets the four requirements of a residential mortgage under Act 6, Appellees state the following: "In fact, and ironically enough, the Act 91 Notices attached to Plaintiff's FAC, at Exhibit E, specifically refer to Defendant's 'Mortgage' and further reference what has to be done to avoid 'foreclosure,' including the opportunity to cure arrearages within hour before a Sherriff's Sale." See Memorandum of Law in Support of Defendant's Preliminary Objections to Plaintiff's First Amended Complaint, p. 3 (emphasis in original).

Similarly, Appellant's reliance on 68 P.S. 905(d) is improper because 68 P.S. § 903(c) provides that: "This act shall not apply to installment land contracts entered into in which the administrator of Veterans Affairs, an officer of the United States, is the seller." Appellant maintains that because it now holds the rights of the "Seller" under the Contract, the exception in 68 P.S. § 903(c) does not apply, as Appellant is not an officer of the United States. However, Appellant's argument is a nullity because Appellant is not granted any greater rights than those possessed by the assignor of the Contract—in this instance, the VA. See Employers Ins. Of Wausau v. Com., Dept. of Transp., 865 A.2d 825, 830 (Pa. 2005) ("Under the law of assignment, the assignee succeeds to no greater rights than those possessed by the assignor). Therefore, Appellant only possesses those rights that were granted to the assignor under the Contract, which includes the limitation under subsection (c).

Finally, Appellant asserts that the verification for its First Amended Complaint is valid. However, this Court dismissed Appellant's First Amended Complaint on the basis of its legal insufficiency, which in turn, deems this issue moot.

IV. CONCLUSION

For these reasons, it is respectfully submitted that the Order entered by this Court on July 8, 2015, should be affirmed.

BY THE COURT:

Raymond F. McHugh

RAYMOND F. MCHUGH, J.

DATE: 10/19/2015

IN THE SUPERIOR COURT OF PENNSYLVANIA

Superior Court Docket No. 2596 EDA 2015

Deutsche Bank National Trust Company f/k/a Bakers Trust Company of California, National Association as Trustee for the Holders of the Vendee Mortgage Trust 1998-2,

Appellant

v.

Emanuel R. Weimar and Christine M. Weimar,

Appellees

On appeal from the Order dated and entered July 8, 2015, in the Court of Common Pleas of Bucks County, Pennsylvania No. 2014-03203

PRAECIPE FOR DISCONTINUANCE

Stephanie Jo Peel
REED SMITH LLP
20 Stanwix Street, Suite 1200
Pittsburgh, PA 15222
Telephone: +1 412 288 7131
Facsimile: +1 412 288 3063
Counsel for Deutsche Bank National Trust Company f/k/a Bakers Trust Company of California, National Association as Trustee for the Holders of the Vendee Mortgage Trust 1998-2

EX. B

To the Prothonotary:

Appellant Deutsche Bank National Trust Company f/k/a Bakers Trust Company of California, National Association as Trustee for the Holders of the Vendee Mortgage Trust 1998-2 ("Appellant") hereby withdraws the above-captioned matter. Kindly mark the docket "discontinued."

Date: February 29, 2016

Stephanie Peel
P.A. I.D. # 88035
Email: speel@reedsmith.com
REED SMITH LLP
20 Stanwix Street
Suite 1200
Pittsburgh, PA 15222
Telephone: +1 412 288 7131
Facsimile: +1 412 288 3063

Counsel for Deutsche Bank National Trust Company f/k/a Bakers Trust Company of California, National Association as Trustee for the Holders of the Vendee Mortgage Trust 1998-2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on February 29, 2016, a copy of the foregoing Praecipe to Discontinue was served via first-class mail, postage prepaid, upon the following, which satisfies the requirements of Pa. R. App. P. 121:

Service by first class mail addressed as follows:

Joseph Michael Adams
Law Office of Joseph M. Adams
200 Highpoint Dr Ste 211a
Chalfont, PA 18914

Kristen D. Little
Shapiro & Denardo LLC
3600 Horizon Dr # 150
King Of Prussia, PA 19406

Stephanie J. Peel
Stephanie Peel

CARRINGTON
MORTGAGE SERVICES

Customer Service 1-800-561-4567 Mon - Fri 8:00AM to 8:00PM Eastern Time
Refinance Inquiries 1-888-267-0584 Mon - Fri 9:00AM to 9:00PM Eastern Time
Visit us online at: www.carringtonms.com

P.O. Box 3489 • Anaheim, CA 92803

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EMANUEL R WEIMAR
CHRISTINE M WEIMAR
58 IRON HILL RD
NEW BRITAIN PA 18901-5314

Mortgage Statement

Statement Date	09/19/16
Account Number	
Property Address 58 IRONHILL RD. NEW BRITAIN PA 18901	
Payment Due Date	10/01/16
Amount Due	**$111,235.76**

If payment is received after 10/16/16, a $0.00 late fee will be charged.

Account Information	
Outstanding Principal	$116,186.47
Deferred Balance(s)	N/A
Escrow Balance	-$32,002.49
Suspense Balance	$0.00
Negative Amortization Balance*	N/A
Interest Rate	7.25%
Maturity Date	01/01/2028
Modification Date	N/A
Prepayment Penalty	No

Explanation of Amount Due	
Principal	$445.39
Interest	$559.48
Escrow (Taxes and/or Insurance) *	$547.48
Other	$0.00
Regular Monthly Payment	$1,552.35
Total Fees Charged	$6,184.24
Overdue Payment	$103,499.17
TOTAL AMOUNT DUE	$111,235.76

Past Payment Breakdown	Paid Last Month	Paid Year to Date
Principal	$0.00	$0.00
Interest	$0.00	$0.00
Escrow (Taxes and/or Insurance)*	$0.00	$0.00
Fees and Charges	$0.00	$0.00
Unapplied Funds	$0.00	$0.00
Total	$0.00	$0.00

*Please see the reverse side of this statement for additional information.

** Delinquency Notice **

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure — the loss of your home. As of 09/19/16, you are 1937 days delinquent on your mortgage.

Recent Account History

- Payment Due 04/01/16: Unpaid balance of $1,552.35
- Payment Due 05/01/16: Unpaid balance of $1,552.35
- Payment Due 06/01/16: Unpaid balance of $1,552.35
- Payment Due 07/01/16: Unpaid balance of $1,552.35
- Payment Due 08/01/16: Unpaid balance of $1,552.35
- Payment Due 09/01/16: Unpaid balance of $1,552.35

Total: $111,235.76 due. You must pay this amount to bring your loan current. **If you are experiencing financial difficulty:** See back for information about mortgage counseling or assistance.

Transaction Activity to 09/19/16

Date	Description	Amount	Principal	Interest	Escrow	Late Charge	Suspense	Miscellaneous
07/17	Late Charge-full payment not recv'd by 07/17/16	$62.09	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
08/17	Late Charge-full payment not recv'd by 08/17/16	$62.09	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
09/10	FCL LEGAL FEES Billed	$916.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
09/10	FCL TITLE SERVICES Billed	$575.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
09/10	FCL RECORDING FEE Billed	$74.25	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
09/10	POST AND PUBLICATION FEE Billed	$19.23	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
09/10	PROP PRES-UTILITIES Billed	$3,987.51	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
09/10	ATTORNEY FEE Billed	$612.25	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

EX. C

Payment Coupon

Visit www.carringtonms.com
to make your payment free of charge today!

EMANUEL R WEIMAR
CHRISTINE M WEIMAR
58 IRON HILL RD
NEW BRITAIN PA 18901

Loan Number	Payment Due Date	Amount Due
	10/01/16	$111,235.76
Late Charge	**If Received After**	**Late Payment Amount**
$0.00	10/16/16	$111,235.76

CARRINGTON
MORTGAGE SERVICES

P.O. Box 3489, Anaheim, CA 92803
(800) 561-4567

PO338

PAYOFF STATEMENT

10/28/16

To: EMANUEL R WEIMAR
58 IRON HILL RD
NEW BRITAIN PA 18901

Loan Number:
Re: Mortgagor: EMANUEL R WEIMAR
Co-Mortgagor: CHRISTINE M WEIMAR

Property: 58 IRONHILL RD.
NEW BRITAIN PA 18901

These figures are good to 11/19/16 subject to the conditions herein.
This loan is due for the 06/01/11 payment.

The current total unpaid principal balance is:	$116186.47
Interest at 7.25000:	$46744.77
Principal & Interest Advance:	$.00
Recording Cost:	$66.00
Other Unpaid Expenses:	$6184.24
Recon/Release Cost:	$0.00
Deferred Pursuant to Loan Modification:	$0.00
Late charges:	$4210.86
PMI/MI Premium Due:	$0.00
Escrow Impound Shortage:	$32002.49
Escrow Credit:	$-0.00
Prepayment Penalty:	$0.00
Suspense Balance:	$0.00
TOTAL AMOUNT TO PAY LOAN IN FULL	**$205394.83**

Funds received on or after 11/19/16 will require an additional $23.0781 interest per day.

We will mail the rest of the papers.

EX. D